



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

8/12

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,095	07/26/2001	Shunpei Yamazaki	07977-082003	2034

7590 11/14/2002

SCOTT C. HARRIS
Fish & Richardson P.C.
Suite 500
4350 La Jolla Village Drive
San Diego, CA 92122

EXAMINER

PERT, EVAN T

ART UNIT PAPER NUMBER

2829

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

9/12

Office Action Summary	Application No.	Applicant(s)
	09/917,095	YAMAZAKI ET AL.
	Examiner Evan T. Pert	Art Unit 2829

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 July 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) is/are withdrawn from consideration.
- 5) Claim(s) is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) is/are objected to.
- 8) Claim(s) are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 July 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. 08/748,233.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u> </u>
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u> </u>	6) <input type="checkbox"/> Other: <u> </u>

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the italicized portions of the phrase "an output of an RF power supply is *gradually or continuously* increased to a value *which is at the time of forming a film*" are unclear.

The adverbs "gradually" and "continuously" do not clearly define the claimed increase of output power, even in view of the few examples disclosed in the specification. Power output of an RF supply is claimed as being "increased to a value", but the type of "output increase" included in the intended scope of coverage is unclear since "gradually or continuously" can readily be taken to mean "not instantaneously" which is an *inherent* property of any power supply output.

The phrase "at the time of forming a film" could apply to the claimed act of increasing to a value, which would then require the increase of RF output power to occur during forming a film. However, the phrase could also be taken to mean that the value to which the supply is increased is "a value occurring at a time of forming a film".

For purposes of examination, the phrase "at the time of forming a film" is taken as being applicable to 1) an increase of power itself during film formation, 2) an actual value of RF power during film formation, or 3) both 1 and 2.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Jian-ming et al. (1988 IEEE article).

Jian-ming et al. teach a PECVD (plasma CVD) method characterized in that an output of an RF power supply is continuously increased to a value which is at the time of forming a film [see Conclusion's item 1 indicating that RF power is advantageously increased "during the deposition process".

Alternative to the Conclusion's item 1, on page 298, Sample B was subjected to a film forming process while turning the plasma on and off. Inherently, then, the RF power is "continuously" and repeatedly increased to a value of power that exists during the deposition of a film, for Sample B.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evan T. Pert whose telephone number is 703-306-5689. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on 703-308-1233. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

ETP
November 8, 2002



EVAN PERT